

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
TELEGLOBE USA INC., TELEGLOBE USA )  
LLC, and TLGB CORPORATION )  
For Approval to Sell and Transfer )  
Assets, and to Transfer a )  
Certificate of Authority. )  
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DOCKET NO. 03-0020

DECISION AND ORDER NO. 20116

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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2003 APR -9 P 4:24

Filed April 8, 2003  
At 2:00 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

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Docket No. 03-0020

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DECISION AND ORDER

I.

By joint application filed on January 30, 2003, TELEGLOBE USA INC., TELEGLOBE USA LLC, and TLGB CORPORATION (collectively, Applicants) request commission approval to undertake a reorganization involving the sale and transfer of Teleglobe USA Inc.'s assets. Applicants also seek to transfer Teleglobe USA Inc.'s commission-issued certificate of authority (COA).

Applicants "expect to consummate the proposed [reorganization] as soon as all of the necessary regulatory approvals are obtained." The target date for closing is "on or about April 15, 2003." Accordingly, Applicants seek expedited action by the commission.

A copy of the joint application was served on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate). On March 20, 2003, Applicants filed their responses to the commission's information requests. By position statement filed on April 3, 2003, the

Consumer Advocate does not object to the commission's approval of the application, subject to one qualification.

## II.

### A.

Teleglobe USA Inc., a Canadian corporation, is an indirect, wholly-owned subsidiary of Teleglobe Inc. Teleglobe USA Inc. provides facilities-based and resold telecommunications services throughout the United States (U.S.).<sup>1</sup>

Teleglobe USA Inc. holds a commission-issued COA to operate as a reseller of telecommunications services in the State of Hawaii (State).<sup>2</sup> Applicants represent that Teleglobe USA Inc.: (1) does not have any Hawaii-based customers; and (2) currently does not provide intrastate service in the State.

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<sup>1</sup>Teleglobe USA Inc. is also a "provider of international telecommunications services in Canada and various other countries." See Decision and Order No. 18141, filed on October 12, 2000, in Docket No. 00-0136.

<sup>2</sup>See Decision and Order No. 16792, filed on January 14, 1999, in Docket No. 99-0001. By this decision and order, the commission instructed Teleglobe USA Inc. to make certain revisions to its proposed tariff.

In response thereto, by letter dated February 12, 1999 and filed on February 17, 1999, Teleglobe USA Inc. submitted its initial tariff, which incorporated the commission's revisions. Teleglobe USA Inc.'s transmittal letter, however, indicates that Teleglobe USA Inc. did not serve a copy of its initial tariff upon the Consumer Advocate. For this reason, in its position statement filed in the instant docket, the Consumer Advocate's non-objection to the application is subject to the qualification that Teleglobe USA LLC's initial tariff incorporate the commission's revisions.

Upon review, the commission finds that the Consumer Advocate's qualification is moot. At the same time, Teleglobe USA LLC is reminded of the requirement to serve copies of its initial tariff and any subsequent revisions upon the Consumer Advocate.

B.

Teleglobe USA LLC is a Delaware limited liability company newly formed for the purpose of completing the subject reorganization. Presently, Teleglobe USA LLC is a wholly-owned subsidiary of Teleglobe USA Inc. Following the completion of the reorganization, Teleglobe USA LLC will become a wholly-owned subsidiary of TLGB Corporation.

C.

TLGB Corporation, a Delaware holding company, is an indirect, wholly-owned subsidiary of Teleglobe International Holding Ltd., a newly formed Bermuda corporation.<sup>3</sup> Following the reorganization, TLGB Corporation will become the direct parent company of Teleglobe USA LLC.

D.

In May 2002, Teleglobe Inc. and its subsidiaries, including Teleglobe USA Inc., filed for debtors' protection in the: (1) Ontario Superior Court of Justice, Canada; and (2) U.S. Bankruptcy Court, District of Delaware. Applicants state that the Canadian and U.S. proceedings "have been consolidated for procedural purposes and are being administered jointly."

As part of the consolidated proceedings, Teleglobe Inc. and its subsidiaries are undergoing a reorganization involving the sale and transfer of Teleglobe USA Inc.'s assets and

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<sup>3</sup>The majority owners of Teleglobe International Holding Ltd. are four investment funds that are affiliated with Cerberus Capital Management (CCM), LP, a private equity fund based in New York. The funds are ultimately controlled by CCM, LP's chief executive officer, a U.S. citizen.

businesses in the U.S. Specifically, on September 19, 2002, Teleglobe Inc. and its subsidiaries (including Teleglobe USA Inc.) and TLGB Corporation's affiliate, TLGB Acquisition LLC, executed a purchase agreement and certain ancillary agreements.

Pursuant to the terms of these agreements:

1. Teleglobe USA Inc. formed Teleglobe USA LLC, as a wholly-owned subsidiary.
2. Immediately prior to closing, Teleglobe USA Inc. will assign substantially all of its assets, including its Hawaii-based operating assets, together with its existing COA, to Teleglobe USA LLC.
3. Upon closing, Teleglobe USA Inc. will transfer all of Teleglobe USA LLC's stock to TLGB Corporation.
4. As a result, Teleglobe USA LLC will: (A) become the successor-in-interest to Teleglobe USA Inc.'s business and operations; and (B) exist as a wholly-owned subsidiary of TLGB Corporation.

Attached as Exhibit B to the joint application are charts illustrating the reorganization.

On October 10, 2002, the U.S. Bankruptcy Court issued its written order authorizing the reorganization, subject to the receipt of all necessary regulatory approvals.

### III.

#### A.

Hawaii Revised Statutes (HRS) § 269-19 provides that no public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, "without first having secured from the public utilities commission an order authorizing it so to do." Moreover, HRS § 269-7(a) authorizes the commission

to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations."

HRS § 269-16.9(e) authorizes the commission to waive regulatory requirements applicable to telecommunications providers if the commission determines that competition will serve the same purpose as public interest regulation. Similarly, Hawaii Administrative Rules (HAR) § 6-80-135 authorizes the commission to exempt or waive a telecommunications carrier or services from the provisions of HRS chapter 269 or any other telecommunications rule, upon a determination that the exemption or waiver is in the public interest.

B.

Applicants contend that the reorganization is consistent with the public interest. In support thereto, Applicants state that:

1. Under TLGB Corporation's ownership, Teleglobe USA LLC "will be able to operate in a more efficient and economical manner and will have better access to capital needed to maintain and grow" its business. As a result, "a stronger and better-financed competitor in the Hawaii telecommunications market" will emerge.
2. Under TLGB Corporation's ownership, Teleglobe USA LLC will be able to effectively compete with other providers for new customers, thereby "ensuring reasonable market prices."
3. Teleglobe USA LLC will have access to the experience and financial resources of TLGB Corporation and CCM, LP.

4. Teleglobe USA LLC's success "is critical to maintaining a competitive telecommunications market throughout the United States, including Hawaii."
5. The reorganization will not adversely affect Hawaii-based consumers, as Teleglobe USA Inc. "does not currently provide intrastate service in Hawaii."
6. As the successor-in-interest, Teleglobe USA LLC "will offer telecommunications services at the same rates, charges, terms, and conditions as those set forth in the tariff of Teleglobe USA Inc. currently on file with the commission".

Upon careful review, the commission finds that the reorganization is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation.<sup>4</sup> Thus, the commission, on its own motion, will waive the requirements of HRS §§ 269-19 and 269-7(a), to the extent applicable, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.<sup>5</sup>

#### IV.

The commission also finds that Teleglobe USA LLC has fulfilled the requirements of HAR §§ 6-80-17(c) and 6-80-18(a), to the extent applicable. Accordingly, the commission will grant Teleglobe USA LLC a COA to operate as a reseller of intrastate

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<sup>4</sup>The Consumer Advocate "recognizes the entry of many long distance telecommunications service providers in the Hawaii market[,] which will "serve to mitigate any traditional public utility regulatory concerns regarding the proposed transaction."

<sup>5</sup>At the same time, the commission will continue to examine a utility's application on a case-by-case basis to determine whether the applicable requirements of HRS §§ 269-19 and 269-7(a), or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application involving similar transactions or circumstances.

telecommunications services. Upon receipt of this decision and order, Teleglobe USA LLC shall promptly file its initial tariff, incorporating the change in name from Teleglobe USA Inc.<sup>6</sup>

V.

THE COMMISSION ORDERS:

1. HRS §§ 269-19 and 269-7(a), to the extent applicable, are waived with respect to the reorganization described in the joint application, filed on January 30, 2003.

2. Teleglobe USA LLC is granted a COA to operate as a reseller of telecommunications services in the State.

3. As the holder of a COA, Teleglobe USA LLC shall be subject to all applicable provisions of HRS chapter 269, HAR chapters 6-80 and 6-81, any other applicable State laws and commission rules, and any orders that the commission may issue from time to time.

4. Teleglobe USA LLC shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Said tariff shall comply with the provisions of HAR chapter 6-80. In the event of a conflict between any tariff provision and State law, State law shall prevail.

5. An original and eight copies of the initial tariff shall be filed with the commission, with additional copies served on the Consumer Advocate. Teleglobe USA LLC shall ensure that the appropriate effective date is reflected in its tariffs.

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<sup>6</sup>By separate order, in Docket No. 99-0001, the commission will approve the voluntary surrender of Teleglobe USA Inc.'s COA. In this respect, in response to the commission's directive, Teleglobe USA Inc., on April 3 and 4, 2003, submitted its: (1) annual financial reports for the years 2002 and 2003; and (2) public utility fee payments.

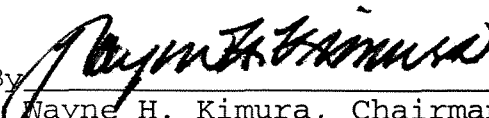


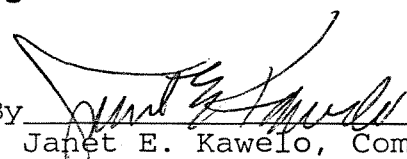
6. Within 30 days from the date of this decision and order, Teleglobe USA LLC shall pay a public utility fee of \$60, pursuant to HRS § 269-30. The business check shall be made payable to the Hawaii Public Utilities Commission, and sent to the commission's office at 465 S. King Street #103, Honolulu, HI, 96813.

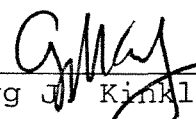
7. Teleglobe USA LLC shall promptly comply with the requirements set forth, above.

DONE at Honolulu, Hawaii this 8th day of April, 2003.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Wayne H. Kimura, Chairman

By   
Janet E. Kawelo, Commissioner

By   
Gregg J. Kinkley, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

03-0020.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20116 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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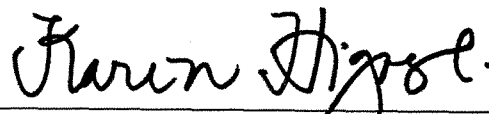
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Certificate of Service - Continued

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DATED: April 8, 2003